HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 76/06

Pradeep Kumar Gupta

Vs.

Civil Judge Junior Division and others

Approved for reporting

_____

~~Not approved for reporting~~

Date of decision 08.06.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 76 (MS) OF 2006

Pradeep Kumar Gupta,
S/o Sri Ram Prakash Gupta,
R/o Old Kattha Mills,
Bareilly Road, Haldwani,
District-Nainital. ..... Petitioner.

Versus

1. Civil Judge, Junior Division,
   Haldwani, District-Nainital.
2. Brijesh Agarwal,
   (as Karta of H.U.F.)
   S/o Sri Madan Mohan Mittal,
   R/o Civil Lines,
   Nainital Road, Haldwani,
   District-Nainital. .....Respondents.

Dated: 08.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sudhir Kumar, Advocate for the petitioner and Standing Counsel for the respondent no. 1. Both the parties have agreed that let the matter be decided at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 17th December, 2005 in Civil Suit No. 34 of 2004 Brijesh Agarwal Vs. Pradeep Kumar Gupta.

Briefly stated, a suit was filed by the respondent no.2 being suit No. 34 of 2004; Brijesh Agarwal Vs. Pradeep Kumar Gupta in the court of civil Judge (Junior Division)/respondent no. 1 for permanent prohibitory injunction. A written statement was filed by the petitioner. However, the petitioner moved an application for admitting some documents on record. The application has been rejected on 17.12.2005 on the pretext that no such documents can be entertained in view of the provisions of Order 8 Rule 1-A of the Code of Civil Procedure.

A perusal of the order shows that the application has been rejected on the ground that since the written statement has already been filed, therefore, the documents cannot be filed thereafter. A perusal of the order VIII Rule 1-A shows as under:-

"[1A. *Duty of defendant to produce documents upon which relief is claimed or relied upon by him.- (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed within the written statement.*

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, he received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to documents.—

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.]"

Sub clause (3) of order VIII Rule 1-A provides that the document can be produced in the Court by the defendant with the leave of the Court.

In view of the judgment of ***Kailash Vs. Nanhku and others 2005 AIR SCW 2346,*** order VIII Rule 1 has been held to be directory. Paragraphs No. 28 and 30 of the aforesaid judgment are quoted below:

"28. In the State of Punjab and another v. Shamlal Murari and another (1976) 1 SCC 719, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that "prosessual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice." Ghanshyam Dass and others v. Dominion of India and others, (1984) 3 SCC 46, the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

30. In Sangram Singh v. Election Tribunal Kotah & another, (1955) 2 SCR 1, this Court highlighted 3 principles while interpreting any portion of the CPC. They are:

(i) A code of procedure must be regarded as such. It is 'procedure' some thing designed to facilitate justice and further its ends: not a penal enactment for punishment and

penalties: not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it.

(ii) There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to.

(iii) No forms or procedure should ever be permitted to exclude the presentation of the litigant's defence unless there be an express provision to the contrary."

Similar view has been taken in ***Vidyawati Gupta v. Bhakti Hari Nayak (2006) 2 Supreme Court Cases 777,*** where reliance has been placed on the judgment of ***Kailash Vs. Nanhku (2005) 4 SCC 480***. Relevant portion is quoted below:-

"In this regard, a reference was made to the decision of this Court in Sk. Salim Haji Abdul Khayumsab v. Kumar (2006) 1 SCC 46 wherein the provisions of Order 8 Rule 1, after amendment, were held to be directory on the reasoning that rules of procedure are handmaids of justice and while the language employed by the draftsman of processual law may be liberal or stringent, the fact remains that the object of prescribing procedure is to advance the cause of justice. Reference was also made to the decision of this Court in

Kailash v. Nankhu (2005) 4 SCC 480 wherein also while considering the amended provisions of Order 8 Rule 1 of the Code of this Court held that unless compelled by express and specific language of the statute the provisions of the Code of any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to; meet extraordinary situations in the ends of justice. This Court went on to hold that merely because the provision of law is couched in negative language implying a mandatory character, the same is not without exceptions and that the directions contained regarding the period for filing written statement in Order 8 Rule 1 of the Code was directory and not mandatory being procedural law."

In view of the aforesaid proposition of law, liberty is given to the petitioner to file an application for reconsideration of the application 59-GA in the light of the aforesaid judgments of the Apex Court instead of keeping the writ petition pending and to install the entire proceedings.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

08.06.2006
Rathour